

REMARKS

Applicants were required to elect one of the following groups of invention:

- I. Claims 1-4, 7, 11-15, 20-23, 32-37, 45, and 68-72 drawn to oxcarbazepine and its methods of use, classified in class 514, subclass 217.
- II. Claims 5, 6, 8-10, 16-19, 24-31, 38-44, 46-57, drawn to processes for making oxcarbazepine, classified in class 264, subclass 109.
- III. Claims 58-67, drawn to a pharmaceutical composition, classified in class 424, subclass 464.

In the response dated Oct. 9, 2003, the Applicants provisionally elected, with traverse, to prosecute the subject matter of Group I, Claims 1-4, 7, 11-15, 20-23, 32-37, 45, and 68-72. Additionally, the Applicants now also elect with traverse to prosecute Form B as a species (Claims 1-4, 7 and 11). The Applicants reserve the right to file a divisional application directed to the non-elected subject matter.

This election is made with traverse because it is believed that the claims can be regrouped into a single group. As the Examiner is aware, there are two criteria for a restriction requirement: (A) the inventions must be independent or distinct as claimed; AND (B) there must be a serious burden on the Examiner. "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct invention." MPEP §803

The Applicants believe that regrouping of the claims as a single group would not place an undue burden on the Examiner to search using the PTO's classification. The Applicants respectfully disagree with the Examiner that three different classes of searches are required. In regard to class 264, the class is entitled: "Plastic and nonmetal article shaping or treating processes." The Applicants do not know how this class is of any relevance since crystalline forms do not seem to be plastic nor an article. The class and subclass seem to apply to entirely different arts. In regard to class 424, the Applicants believe that after searching class 514, subclass 217, the Examiner does not need to carry out additional searches in class 424. Class 514,

subclass 217 would probably be comprehensive in finding art related to all aspects of oxcarbazepine.

The Applicants believe that once the crystalline forms are found to be free of prior art, so would their pharmaceutical compositions and processes for preparing them, *i.e.*, the art could not have made a pharmaceutical composition of an unknown crystalline form. Hence, even if the Examiner is unwilling to examine all these classes together, the Examiner should allow the Applicants join the other classes once the crystalline forms are found to be free of art.

In regard to election of the species, the Applicants note that the Examiner may examine the various crystalline forms in a facile manner. The same art applies equally to all the various crystalline forms, *i.e.*, if there is a crystalline form disclosed in a reference, the Applicants can distinguish all the present crystalline forms at once in a single response over such crystalline form.

Applicants believe that regrouping the claims in the suggested manner will expedite prosecution.

CONCLUSION

If there are any issues outstanding after consideration of this election, the Examiner is invited to contact the undersigned to expedite prosecution of this case.

Respectfully submitted,

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